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H U M A N E V E N T S

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News Section

Printed in Two Sections

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Nixon's Future: The Vice President scored a big triumph by his deportment during his visit to England. It was the kind of public-relations job that Nixon does supremely well. This "form" will continue to buttress his uphill climb to the Presidential nomination in 1960, and to election.

But it's going to be "uphill"—decidedly so, in the opinion of even Nixon's strongest supporters in the Capital. True, he enjoys heavy backing among the rank and file of the GOP. But so did Taft from 1948 to 1952; and, today, the same pattern of dissolving the front-runner's pre-eminence appears in the case of Nixon as it did in that of Taft. "Nixon, he's the one we want for opponent, he's the easiest man to beat"—so runs the refrain from Democrats, headed by former President Truman.

The Capital laughs, for it remembers that a similar line, "Taft is the easiest man to beat," became a cardinal publicity gag of the Democrats in previous pre-convention maneuverings. Democratic strategists had privately (see the confession of Truman's publicity man, Jack Redding, in his book, Inside the Democratic Party) decided that Taft would actually be the hardest man to beat, "me-too" Dewey the easiest. Thus they determined to say the opposite in public, to induce the GOP to nominate the less formidable candidate. The Modern Republicans fell for this stratagem in 1948 and 1952. Observers now conclude that the Democrats have similarly decided Rockefeller would be the easiest to beat, Nixon the hardest, and are taking the old gag out of mothballs.

● Another method to be used in the attempt to cut Nixon down will be the opinion polls. Such polls, just before elections, are honest and fairly reliable, for they

are subject to the inexorable check of election results, a few weeks later. But when no election day is near, and "popularity" is the test, they are reputedly subject to "doctoring." One high GOP leader privately remarks about such between-election polls: "You can buy them. I know, for I bought them when I was National Chairman." Polls slanted to suggest a declining popularity for Nixon and a rising popularity for Rockefeller in the next two years may well be expected. Then watch out for: "He's a good man, but he can't win."

Finally, the pervasive power of "influence" and "money" will work against Nixon. This is Rockefeller's "invisible" weapon—and little documentation can be produced to expose it. A lawyer in Indianapolis, a member of the convention delegation, may be influenced to vote for Rockefeller because he is retained by a big New York firm, controlled by Rockefeller interests. The pressures thus exerted are invisible to the public eye.

A former GOP Governor of an Eastern state told HUMAN EVENTS this week that a Rockefeller subsidiary in his state had offered him \$10,000 per annum as a consulting retainer; he declined but said that there were others, of equal influence and connections, who might accept. And so on. Any observer who has closely watched how party conventions and the delegations thereof are manipulated could multiply such instances.

● To offset such an "invisible" attack, Nixon must obviously solidify his popular base of strength. Fellow Republicans on Capitol Hill repeat the stern advice of Senator Barry Goldwater (quoted in last week's issue of HUMAN EVENTS) to the effect that the Republican party, to win in 1960, must take a "position to the right." Goldwater, whose striking success at the polls last month qualifies him as an authority, will also stress the necessity of cutting down the power of the labor bosses—an issue on which Nixon has so far failed to take a definite, constructive stand.

Nixon faces critical tests during the next two years. He was regarded as a "shoo-in" for 1960 nomination and election six months ago; that cannot be said today.

Fight Against Inflation: Those in Washington who recognize the dread onset of inflation and seek ways and means to check it dismiss as "minimal" the reports of Administration efforts to cut the Budget. Chairman Wilbur Mills (D.-Ark.) of the House Ways and Means Committee offers little encouragement to those who seek radical paring of expenditures. His mood will probably prove significant of the Democratic leadership's attitude during the coming congressional session.

Two moves which might prove beacon lights in the darkening storm are suggested to encourage anti-inflation sentiment among the public:

(1) Many are hoping for a statement from former Secretary of the Treasury George Humphrey, warning that a bigger boom followed by a bigger bust is likely if present high Federal spending continues. Friends are pointing out to Humphrey that he was proved right in his warning of January, 1957 (which set off the big popular wave for a lower Budget, stymied by Ike), and that reaffirmation of his fears about our lavish appropriations might well arouse the general public.

(2) Economic advisers of the President are being prodded to take a step which could highlight the anti-inflation battle. Such a step might be White House endorsement of an amendment to the Employment Act of 1946, which commits the Federal Government to promoting "maximum employment." The amendment would emphasize the need for Federal policy to preserve the value of the dollar, as well as to maintain high-level employment. Such a move could well introduce the "honest dollar" as a major political issue.

Berlin Crisis: Khrushchev's intention obviously is to give the Western world six months in which to develop heated intra-family arguments about whether or not to appease Soviet Russia in the matter of the Berlin crisis. Diplomatic sources point out that he can play one free nation against another, and that he undoubtedly counts on certain influential voices in the United States to urge a weakening in the firm line set down by the West German and US Governments.

Dulles' firm line—"not an inch on Quemoy"—won out in the recent China Sea crisis. Yet, according to diplomatic row, it is an important but little-known fact that the Soviets and Red Chinese, in their diplomatic conversations with the US, never once showed any interest in the ceding of Quemoy, indeed ignored this point entirely. (Many "liberal" commentators, in spite of this, made the issue of Quemoy the major point in the crisis.)

What the Soviets and Red Chinese constantly stressed, through their ambassadors, was not the ceding of Quemoy, but the removal of all US forces (army, navy and air) from Formosa: in short, the surrender of that vital stronghold against communism. In the expected arguments over "why fuss about Berlin" in the American press and over the air waves, this inside story of the Quemoy crisis may prove instructive.

France Turns Right: The French general election gave the rightist parties a big margin. De Gaulle's own party led with the largest number of seats, but the independent Conservatives were not far behind. The mass of the voters cast their ballots against the left and for

the right, as even "liberal" correspondents ruefully admit.

Diplomatic row regards this as an historic event, a virtual revolution of the right and a basic change in the attitude of French voters. For many decades, the "little man" in France has felt an irresistible affinity for the left—"toujours a gauche." Even when he possessed a hoard of gold, he cast his ballot for one of the numerous leftist parties. The famous political scientist, Andre Siegfried, once described the "axis" of the French democratic system as a "*mystique de gauche*"—a "mysticism of the left." Apparently, the elections of last week have written *finis* to that state of mind in France.

Washington observers add up global political events: (1) the French election; (2) the fact that the Conservative party in England has a strong hold on the reins of Government; (3) the continuance of Adenauer and his conservative Christian Democrats in office in West Germany; (4) the recent general election in Australia, which gave Premier Menzies' conservative coalition another lease on power; (5) the continued strength of the conservative Diefenbaker Government in Canada; (6) the long-delayed victory of the conservative Nationalist party in Uruguay, over the radical Colorado ("Red") Liberal party, which had held power for nearly a century.

Almost everywhere in the free world, a conservative wind is blowing—save in the USA. However, while an increased Democratic majority takes over Congress, it is notable that the Democratic leaders reject the label "radical" and vehemently insist that they are "moderates."

A well-known right-wing newspaper commentator recently received a surprise visit from a just re-elected "liberal" Democratic Senator. The Democrat sought to convince the conservative writer that he, the Democrat, was wrongly labelled a "spender" and "left-winger," that he was really a "moderate" and "middle-of-the-roader." Perhaps, a straw in the wind.

Atom Plane: Reports that the Russians have developed a nuclear-propelled airplane have stirred much discussion in the Capital. The trade magazine *Aviation Week* claims a prototype of such a craft has been put in the air and seen by parties unnamed.

Already, "liberal" pundits, assuming the truth of this story, are blaming the "niggardly" appropriations asked by the Administration—a line that does not wear well. HUMAN EVENTS for July 30, 1955, called attention to a piece in another trade organ, which, bemoaning failure to push the nuclear airplane project, ascribed it—not to economy—but to the fact that the program had been "a stepchild of the entire atomic energy program for years because it did not fit into the thinking of some scientists, that nuclear energy should be confined to peaceful uses." (Article by David S. Teeple, in *American Aviation*, July 4, 1955.)

These scientists—J. Robert Oppenheimer was a prime example—have tended for years to shun weapons development in favor of the sort of activity represented by "Atoms for Peace." The latter, so far, has developed only civilian reactors which cost about eight to ten times as much as coal-fueled power plants in production of

electric power—at the same time being located dangerously near heavily populated areas of this country.

If—it is pointed out—the money wasted on these “Atoms for Peace” projects had been expended on development of a nuclear-propelled airplane, we might well have just such a craft at our disposal now. The culprit—it is emphasized—is not doctrinaire economy and Budget balancing (as the “liberal” pundits assert) but misallocation of funds by pacifist-minded bureaucrats and scientists.

Farmers Choose Freedom: Advocates of free enterprise were cheered last week by the vote of American farmers to end controls on the production of corn, and to reduce Government support of this crop. The returns reflected overwhelming disapproval of the control-support strait jacket, with 246,702 votes against, only 100, 274 for.

Secretary of Agriculture Ezra Benson, a persistent advocate of reducing controls, hailed the vote as “a firm expression by farmers of a willingness to move further in the direction of a freer agriculture and away from the burdensome, ineffectual programs of the past.”

The vote was also welcomed by Charles B. Shuman, president of the American Farm Bureau Federation, the largest US farm organization. “The new corn program,” Shuman said, “is not a final solution of our feed-grain surplus problems, but it indicates that farmers favor a return to a market-price system. By relating future support prices to actual market prices, as the new program will do, the market-average approach should assist in bringing the production and consumption of feed grains into better balance.”

Conservative Coalition: One outspoken Republican legislator—the only one from his large state—revealed last week the secret of his thumping re-election victory this fall. He is a solon whom many in the Capital consider to be the most phenomenal of all young Republican Congressmen—Representative Bruce Alger of Texas. (See “The Labor Bosses’ War Against Bruce Alger,” by James L. Wick, in HUMAN EVENTS for September 29, 1958.)

Appearing on the Manion Forum radio show last week, Alger discussed his three successive victories in the heart of Democratic territory, and in an industrial center to boot. The key factor, Alger said, was a coalition of conservatives, regardless of party label. “Dallas Countians,” he said, “like others in the South, for the most part regard themselves as Democrats. But conservatives of both parties effectively united to stand behind an unabashedly conservative record in Congress, and I don’t hesitate to suggest that this effective coalition of like-minded people must be accomplished in communities and Congressional districts throughout this Nation, if individual liberties, protected by a jealously limited and fiscally responsible Federal Government, are to survive.”

Foreign Aid: The vexed subject of foreign aid is once more debated in the Capital, as the opposing sides form ranks for the new session of Congress. Two important developments last week highlighted the recurrent strug-

gle between giveaway-minded bureaucrats and economy-minded legislators:

1) The first salvo was fired by the Executive branch, as President Eisenhower announced the formation of a special committee to study the effects of the foreign-aid program. This group, while supposed to come up with an objective survey of foreign aid on its merits, is viewed merely as this year’s substitute for the Eric Johnston selling campaign of early 1958.

The group features the usual flock of lame-duck Fair Dealers—holdovers from the Truman regime. No less than five of its nine members served under Truman in some bureaucratic capacity. They are: William H. Draper (chairman of the survey team), John J. McCloy, Marx Leva, George McGhee and James E. Webb.

2) A counterblast was immediately forthcoming from Representative Otto Passman (D.-La.), who occupies the strategic position of chairman of the House subcommittee on foreign-aid appropriations. Passman said last week that he viewed the Administration’s new committee “with suspicion.” The Louisiana legislator predicted that the main purpose of the Draper committee would be to recommend removal of military foreign aid from the jurisdiction of his subcommittee, and to place it under the military budget, as a “national defense” item. The object of this maneuver, he stated, was simply to bury that much foreign aid in the military appropriations so that the public could not obtain an exact estimate of how much tax money was going for giveaways.

‘Civil Rights’: More than a year after the “civil rights” battle in Congress—which ended in the creation of a “Commission” and a special branch of the Justice Department, designed to deal exclusively with denials of voting rights to Negroes—the huge apparatus finds that it has practically no complaints to work with.

The *Wall Street Journal* (November 28, 1958) reports that fewer than 40 voting complaints have been considered worthy of serious consideration, and that only one court suit has been filed in behalf of a Negro plaintiff. Meanwhile, fact-finding teams are probing complaints in only four states—and one of those is New York. “People around here,” remarked one Civil Rights official, “are surprised and disappointed.”

DR. and MRS. WALTER F. SCHWARTZ, Pasadena, Calif.:
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* * * *

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A Man Who Dared

* * *
*This TV Star Stood For Principle
—And Paid the Price*

By EARL T. BARNES

TOM DUGGAN is known in Los Angeles as a TV personality who, six nights each week, used to cut sponsors into small pieces; slashed with a razor-sharp wit, almost aimlessly, at current events; and dived relentlessly into anything red, pink or any shade thereof. Now, following Duggan's courageous stand against the forces of the left, California viewers can no longer see this favorite telecaster at his accustomed stand. He is off the air.

After he returned from World War II, where he served in the Marines, Duggan's fearless reporting and commentary cost him a job or two. When he broadcast over NBC in Chicago, the International Boxing Club felt the sting of the Tom Duggan whip. However, in 1956, after a seven-year battle with the boxers' bosses, he sought the charm and beauty of Southern California.

Bing Crosby's KCOP-TV in Los Angeles soon began featuring the Tom Duggan show. Viewers were amused by the man who billed himself as a fighting Democrat, supporter and friend of Attorney General Pat Brown, and opponent, in several local skirmishes, of the conservative *Los Angeles Times*. Sponsors were amazed by the jump in their sales, despite the fact that Duggan never seemed to accept them or their products. Proponents of the right to work shuddered at his attacks on that proposal, which was up for balloting in California this year—a fight which shared headlines with the celebrated Brown-Knowland Governorship race.

Then Tom Duggan read, in **HUMAN EVENTS** for October 6, 1958, the article entitled, "Your Pink Slip Is Showing, Mr. Brown," by Oliver Carlson, and the facts contained therein concerning the Communist-packed bibliography of Pat Brown's little Green Book that Turned Red. He was shocked to learn of the Communist-front backgrounds of the list of two score Brown-recommended authors. During the last full week of the California campaign, Duggan dug deep into the incredible Brown background. The Tom Duggan show suddenly became an anti-Brown showcase.

Brown's supporters moved quickly and directly. Duggan's sponsors were harassed by telephone calls, letters and telegrams. The old story: the threat of pickets, boycotts, etc. The station was also one of their targets, as was Duggan personally. However, none of the hecklers had judged Tom Duggan in his proper perspective. Each threat seemed to serve as an additional irritant. By election eve, Tom Duggan was in full swing, pounding away at Pat Brown's record.

In the weeks before the election, most state candidates had appeared on The Tom Duggan Show; the appearances had included an earlier warm, friendly chat with "moderate" Pat Brown. Senator Knowland, Governor

Knight, and many of the Congressional candidates and aspirants for lesser offices naturally welcomed the opportunity to appear with Duggan before his near quarter-of-a-million viewers in Los Angeles, San Diego, Santa Barbara and Pasadena.

On Monday, November 3, Tom Duggan greeted Senator Knowland on his show, and for one hour he praised the courageous, uphill fight Knowland had made. To the vast television audience, it was perfectly clear that Knowland was Democrat Duggan's choice for Governor, and that, in his opinion, Brown's election would be a savage blow to California and the Nation.

The next evening, November 4, just before 11:00 p.m., William Knowland, in San Francisco, conceded the election. Duggan, on camera in Los Angeles, was handed the Knowland statement. His response, after giving the news to his viewers, was dramatic. He explained his own political philosophy and his devotion over the years to the Democratic party. He told his audience that with the election of Pat Brown as the head of the California governing body, everything for which the Democratic party had stood, as he knew it, had been shattered and destroyed.

"From this point on, I shall be a Republican, a working Republican. For when the Democratic party puts forth a man like Pat Brown, and elects him on a party platform such as the Democrats have in California, my responsibility as an American citizen demands that I reject the party and its candidates."

PEOPLE HAVE BEEN switching political affiliations ever since the birth of the first party. But Duggan's change-over had a rich flavor of honesty and integrity not ordinarily found in defeat. His farewell speech to the Democratic party, in the parlance of the law, could be properly placed in the category of a "declaration against self-interest."

Sponsors, the lifeblood of any television production, know the political facts of life; they realized that Duggan would be *persona non grata* with the new state administration. Duggan led an unsuccessful frontal assault, and while down in defeat, cried his defiance to the victor. Thus it came as no surprise to anyone familiar with the case that, three weeks after the election, Tom Duggan's program was forced off the air.

Despite his present enforced silence, Duggan is viewed by some California Republicans as a ray of hope in a cloudy sky. If he can be returned to the air, he may provide the inspiration and guidance needed for the rejuvenation of conservatism in California.

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WHEN THE COURT IS NOT SUPREME

The Real Issue: Government by Law, Not Men

By SAMUEL B. PETTENGILL
Former Member of Congress from Indiana

WE ARE TOLD daily that the Supreme Court decision in the school integration case of *Brown vs. Board of Education* is "the law of the land" and must be obeyed as such. The Attorney General of the United States has lent his name to this doctrine. The President says that failure to obey the decision is "anarchy." And you can count on the fingers of one hand the number of Northern big-city newspapers that have been fair and objective with reference to the legal and moral position of the people of the South who object to this decision. Indeed, the ignorance of most editorial writers on the Constitution is appalling.

But more important than integration or segregation is the preservation of the Constitution against the brainwashing of the American people now going on to support the curious notion that a decision of the United States Supreme Court—any decision—is "law."

On October 5, 1957, HUMAN EVENTS published my article, "What is 'The Law of the Land'?" But the subject is so important and the brainwashing so intense that further discussion may be of interest. Certainly, at a time when the Nation is facing its worst threat since Valley Forge, it is a low grade of statesmanship for those on either side of the school case to divide the Union with inflammatory words.

Let us consider the position of the South from the high ground on which President Roosevelt stood in 1930 when he said: "The preservation of home rule by the states . . . is a fundamental necessity if we are to remain a truly united country. . . . We are safe as long as the in-

dividual home rule of the states is scrupulously preserved and fought for whenever it seems in danger."

In my previous article I pointed out that, at almost the same time Congress proposed the Fourteenth Amendment, it passed a law requiring segregated schools in the District of Columbia; that state legislatures which ratified the Fourteenth Amendment passed statutes requiring or permitting segregation; that 17 states (seven outside the South) and the District of Columbia had segregated schools on the day the Supreme Court decided the *Brown* case; that the Supreme Court had itself held 58 years previously that "separate but equal" public facilities did not violate the Fourteenth Amendment.

CAN IT THEN be believed that the Members of Congress and state legislatures of the time thought that the Fourteenth Amendment forbade segregated schools? The answer is clearly, no. This applies to the school case as follows, quoting a Federal judge of 1874: "Legislation by Congress at the time of proposing or immediately following the proposal or adoption of an amendment is authoritative in determining the scope of a constitutional provision." In short, the fact that Congress provided segregated schools in the District of Columbia clearly shows that it did not intend the Fourteenth Amendment to require integrated schools. The same applies to the ratifying legislatures.

It is a maxim of the law centuries old that the intention of the lawgiver is the law. As the Supreme Court once said: "The whole object of constitutional construction is to give effect to the

intention of the framers of the instrument, and additionally, to the intention of the people in adopting it."

Again, the Court has said that "contemporary interpretation of the Constitution is entitled to great weight, and the practice and acquiescence under it for a period of years [in this case, 86 years] afford an irresistible answer . . . and fix the construction."

"The quiet assent of the people to an unbroken and unvarying practice ought to conclude the action of courts in favor of the principle," even though individual judges would decide differently if the question were new. What a provision of the Constitution "meant when adopted, it means now. Those things which are within its grants of power, *as those grants were understood when made*, are still within them, and those things not within them remain still excluded."

Finally, it is a maxim of the law that in the interests of stability in government, and respect for the courts, decisions of long standing should not be overruled except for the most convincing reasons that they had been wrongly decided. This is the maxim of *stare decisis*.

IN THE LIGHT of these maxims and facts the South is asking: Did or did not the Supreme Court attempt to amend the Constitution—rather than interpret it—by saying that the Fourteenth Amendment forbade segregated schools? That question, I repeat, is far more important than segregation or integration as such.

The South is asking: Are we to continue to live under a government of law or of men (judges)? That exact question was asked in the historic rebuke of the Supreme Court, by the recent Conference of Chief Justices of the several states, as printed by HUMAN EVENTS on September 1, 1958.

For the benefit of editorial writers and political orators, a few more facts must be stated bluntly:

- *There is not a word in the Constitution which says that a Supreme Court judgment is "the law of the land"; there is not a word which*

says that public officials or private citizens are legally bound by a decision of the Supreme Court (except the parties to the particular case itself).

- There is not a word in the Constitution which gives the Supreme Court the power or right to enact law, or to amend the Constitution by giving it a meaning which the proposing Congress or ratifying state legislatures, or the people, did not intend it to have.

- *The only persons who have the power or right to amend the Constitution are the people, in the manner set forth in the Constitution. The only persons who have the power or the right to enact Federal law are the members of the House and the Senate and the President by his approval, or in case of treaties, the members of the Senate. This is what is meant by a government of law. And Congress has never said that segregated schools are against the law.*

So far as the Court is concerned, it is not a question of whether school integration is a good thing, or a bad thing; whether it "ought to be the law" or not. With the wisdom or unwisdom of a law (or a section of the Constitution) the Court is not concerned. Time and again the Supreme Court has said this. As Chief Justice Hughes once put it: "The point is not one of motives, but of constitutional authority, for which the best of motives is not a substitute."

As far back as 1824, the great Chief Justice Marshall said: "Judicial power, as contradistinguished from the power of the law, has no existence. Courts are the mere instruments of the law and can *will* nothing. . . . It is always exercised for the purpose of giving effect to the will of the legislature [or the Constitution makers], or in other words, to the will of the law."

What does the Constitution say? "All legislative powers herein granted shall be vested in a Congress of the United States . . ." (Article I, Section 1). "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution," etc. (Article V).

The Court, therefore, has no legislative pow-

er, no power to amend the Constitution. This is the crux of the matter, as seen by the South, and many in the North and West as well.

Courts decide cases. They do not "make law." Their decisions are not binding, constitutionally or morally, on anyone except the parties to the case. The decision of one US Circuit Court of Appeals is not binding on another Circuit Court; the decision of one US District Court is not binding on another District Judge (except as to the parties to the case), even though both are in the same Circuit. And the US Supreme Court is not *bound* by its own previous decisions. It is an anomaly to say that anything is law which judges themselves are not obliged to obey.

HAVING SAID THIS, it is necessary, in order to clear up the present confusion, to admit that courts sometimes participate in the law-making process by giving reasons for a decision which seem so convincing that they are subsequently accepted by the people as good law. This is how the "common law" developed—those "usages and customs which have prevailed . . . since the memory of man runneth not to the contrary."

This point was never more clearly stated than by one of my law teachers, Arthur L. Corbin, now Professor Emeritus of Contracts at Yale Law School. Corbin says: "A rule of law is born because it seems to fit the occasion. . . . The supposed rules of the common law are merely the *reasons* given by the courts for their decisions. The actual decision binds the litigating parties only. The reasons bind nobody at all."

While a judge should study the reasons given in other cases, Corbin says: "Many of these precedents are erroneous, *no one of them is the law*, none of them is binding except as to the litigating parties and the exact issue between them."

This is the way the matter was understood by Thomas Jefferson, Andrew Jackson and Abraham Lincoln. Lincoln said that if he were in Congress he would not be bound by the Dred Scott decision.

Thomas Jefferson wrote: "It is a very dangerous doctrine to consider the judges the ultimate arbiters of all constitutional questions. . . . The Constitution has erected no such single tribunal."

This explanation of the way by which courts sometimes participate in the lawmaking process is not legal quibbling. It goes to the crux of the present dispute. A court does not "make law" by its own fiat. The process is like that of a principal ratifying the act of an agent. The act becomes valid, not because the agent says so, but only because the act is accepted by the principal as his own act.

The decision of Chief Justice Marshall, that a court can hold an act of Congress unconstitutional when it is *clearly repugnant* to the Constitution, did not become law because Marshall said so, but because the reasons given by him for his decision were so powerful and convincing that other judges, lawyers, Congress and the people accepted his decision as sound law by which they would be governed in future cases when a law *clearly violates* the Constitution.

Another decision by the Supreme Court, *Chisholm vs. Georgia*, was not accepted by the people. They said so by adopting the Eleventh Amendment. The Supreme Court later said: "This amendment, expressing the will of the sovereignty of the whole country, superior to all legislatures and all courts, actually reversed the decision of the Supreme Court."

Violent resistance to a Supreme Court decision, however wrong it may be, is intolerable. It would probably have been better to let the Dred Scott decision of 1857 stand on the books for years, awaiting the growth of moral sentiment against slavery, than to overrule it by the Civil War. As President Eisenhower has said, time and tolerance are necessary to preserve the freedom *and* unity we need so much today.

In the interest of stability and uniformity of the law, it is generally desirable that lower Federal and state courts abide by a decision of the US Supreme Court, even if they think it wrong. But they do so, not because the Constitution says they must, for it does not, but

for the practical reason that if they do not abide by it, they know they will be reversed on appeal, and no judge likes to be reversed.

The school case involved appeals from four states—Kansas, Delaware, Virginia and South Carolina—and the District of Columbia. In all of these five jurisdictions, the lower Federal and state judges had unanimously held that segregated schools were constitutional because of previous decisions of the Supreme Court, which then reversed itself and held that everybody had acted unconstitutionally for 86 years!

BUT IF WE are to continue as a free and sovereign people, legal and political resistance to the school decision as "law" should not be shouted down by those who favor the decision. It should be remembered that this same sort of resistance once had much to do with the abolition of slavery. I refer to the Fugitive Slave Act of 1850, passed by Congress, and held constitutional by the Supreme Court. This act and decision were almost universally denounced in the North. Men of the highest principles joined in resisting it by helping fugitive slaves to freedom *via* the "underground railroad." At that time, the shoe was on a different foot.

(While violent resistance cannot be countenanced, it is nevertheless one of the ironies of American history that John Brown, who defied both Congress and the Supreme Court by gunfire at Harper's Ferry, achieved martyrdom in the annals of "liberal" democracy.)

And how many editors and orators who are now browbeating the South accepted the Volstead Act and the Eighteenth Amendment, both held constitutional by the Supreme Court?

The great issue of complete Federal supremacy versus states' rights inevitably involves political and legal conflict. The processes by which a free people struggle to preserve freedom and the Constitution cannot be wrapped up in a neat little bundle of words to be hurled at those who disagree.

The Hon. Samuel B. Pettengill, author, lecturer and radio commentator, was a Member of Congress from Indiana, 1931-'39. His most recent contribution to HUMAN EVENTS was "What is 'The Law of the Land'?" October 5, 1957.

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